IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Court's order whether the case is or not approved for reporting

(Chapter VIII, Rule 32(2) (b)

Description of Case

Criminal Appeal No. 652 of 2003

Pratap Singh

Versus

State

Date of decision :- July 27, 2005

A.F.R. (Approved for Reporting)

~~Not approved for reporting~~

Date :- July 27, 2005 Initial of Judge

Note :- Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

IN THE HIGH COURT OF UTTARANCHAL

AT NAINITAL

CRIMINAL APPEAL NO. 652 of 2001
(OLD NO.2086 OF 1987

Pratap Singh S/o Shoban Singh
R/o village Naroni
P.S. Mukhteshwar
District Nainital ..... Appellant

Versus

State of Uttaranchal .... Respondent

Mr. Dharam Veer learned counsel for the appellant
Mrs. Nishat Intzar learned AGA for the State.

Hon'ble J.C.S. Rawat, J.

1. This a criminal appeal against the judgment and order dated 14.8.1987 passed by Sri S. K. Malaviya, the then /Special Judge/ Addl. Sessions Judge, Nainital in S.T. No.148/1984 State Vs. Pratap Singh, whereby the learned Addl. Sessions Judge/Special Judge convicted and sentenced the appellant to undergo R.I. for a period of six years under section 307 IPC.

2. The prosecution case, in brief, is that Smt. Rajkali (PW1) who was ward Aya in the Hospital at Kicha submitted a written report (Ext.ka.1) to the police on 23.4.1983 alleging therein that at about 10.30 p.m. she was in her quarter. The appellant came there having gun in his hand. The appellant abused her. On closing the door by Smt. Raj Kali the appellant knocked the door by but of the gun. In the mean time the police came there. She herd the noise of fire. She came out of the house and saw that one police personnel was lying on the ground in front of the house in injured condition. The appellant threatened her for dire consequences. The other police personnel arrested the appellant alongwith the firearms.

3. The injuries of Satpal Singh (PW3) were examined by Dr. Yogesh Mishra (PW2) Medical Officer, P.H.C., Kichha on 23.4.1983 at 11:20PM vide injury report Ex.Ka2. The following injuries were found on his person:-

(1) Lacerated wound (gunshot), 14cm x 8cm into bone deep present on the back of left elbow, 17.5cm about to left Ulna styloid process. Multiple commuted fracture of underlying bone present. Cartridge case (Gatta) bone pieces recovered form the wound and sealed. Tatooing and blackening absent. Fresh bleeding was present.

X-ray was advised and as per supplementary report Ex.ka.3 there was multiple committed fracture of left elbow joint. The injury was grievous.

4. Constable Het Ram also submitted a written report (Ex.ka.4) at P.S. Kichha on 23.4.1983 at 11.50 p.m. narrating the above facts. On the basis of written report, chick report (Ex.ka.6) was prepared. The investigation was conducted by S.I. B.K.Juyal (PW7).He prepared recovery memo (Ex.Ka5) regarding taking into possession the gun and cartridges. He also prepared recovery memo(Ex.Ka8) in respect of taking into custody the samples of simple earth and blood stained earth. Site plan (Ex.Ka9) was also prepared by him. After completing the formalities of investigation

chargesheet (Ex.Ka10) was submitted against the appellant.

5. Charge was framed against the appellant u/s 307 IPC to which he pleaded not guilty and claimed to be tried.

6. The prosecution in support of its case examined PW-1 Smt. Raj Kali who proved written report Ex.Ka1, PW2 Dr. Yogesh Misra who proved injury reports Ex.Ka2 and Ex.Ka3. PW3 C/ Sat Pal Singh is the injures, PW4 Ashok Kumar and PW5 Vinod Kumar are the eye-witnesses, PW6 constable Het Ram is also an eye-witness of the incident who proved Ex.Ka4 written report, PW7 B.K.Juyal is the Investigating Officer who proved Ex.Ka4 to Ex.Ka10.

7. In the statement recorded u/s 313 Cr.P.C. the appellant denied the prosecution case and stated that he has been falsely implicated in this case due to enmity. The appellant produced DW1 Bhoj Raj Singh in his defence.

8. The learned trial court after appraisal of the evidence on record found the appellant guilty u/s 307 IPC and convicted and sentenced the appellant as mentioned above.

9. I have heard the learned counsel for the parties and perused the evidence on record.

10. The perusal of the record reveals that the prosecution has alleged in the evidence that the injured PW3 constable Sat PalSingh alongwith constable Het Ram PW6 and other police personnel were on patrol

duty during the night. At about 11 p.m. they reached near the government hospital Kichha. They heard noise of knocking of door of some house. They proceeded towards that direction and they saw that the appellant was knocking the doors of Smt. Raj Kali PW1 with the but of his gun and she was crying for the help from inside her house. When the police personnel intercepted at the place and warned the appellant for not doing so the appellant did not pay any heed to the warning form the police personnel. Immediately after hearing the warning form the police party, he started to go on the upper stairs and from where he opened fire upon the police personnel, which hit at PW3 constable Sat Pal Singh and he sustained injury on his elbow. Immediately after the firing the other police personnel apprehended the appellant at the spot and they snatched his gun and the cartridges. The injured was taken to the hospital where he was medically examined. Constable PW6 Het Ram has further stated this fact. Both the constables are the witnesses of the incident. Satpal Singh is the injured witness and Het Ram was also accompanying the injured at the time of the incident.

11. Whereas PW1 Smt. Raj Kali is concerned she stated that on the date of incident at about 12 or 1 a.m. in the night she was preparing her food in the old hospital where the appellant came there to call her.

When the appellant came, there was an altercation in between the appellant and herself and thereafter she came to her house and closed the door. Later on she heard the noise outside her house and also heard that some one was knocking her door but she was not

aware as to who was the knocking of her door. She cried for help. She was asked by the police to open the door. As soon as she opened the door she found that one police constable was injured and was lying on the ground. The same factum has been narrated by PW4 Ashok Kumar.Both the witnesses stated that they had not seen who had fired. PW5 Vinod Kumar appeared before the court below and he totally denied the incident. He was declared hostile by the prosecution.

12. It is well-established position of law that the evidence of a hostile witness can also be relied to the extent, it supports the prosecution version. The evidence of such witness cannot be treated to be washed of the record. It remains admissible in the trial and there is no legal bar to base the conviction on the testimony of a hostile witness. The very object of taking evidence is to discover the truth as far as it is humanly possible for the court to do so. The fact, therefore, that sound public policy requires that a party should not be permitted to malign his won witness, cannot and does not absolve the Court of its own high duty of attempting to discover the truth. Even when a witness deposes in favour of the case of the party calling him, the court on a consideration of his evidence may either believe or disbelieve him. Even in such a case, the Court has power and duty of deciding

whether or not to believe the witnesses. In the present case the factum of incident has been corroborated by PW1 Smt. Raj Kali and PW4 Ashok Kumar. They have merely not stated that the appellant fired upon the injured. They have seen immediately after the incident

that the body of the injured was lying on the ground and the injured sustained injuries.

13. It is a matter of common experience that in recent times there has been a sharp decline of ethical values in public life even in developed countries much less a developing one, like ours, where the ratio of decline is higher. Even in ordinary cases the witnesses are not inclined to depose or their evidence is not found to be credible by the Courts for many fold-reason. One of the reason may be that they do not have the courage to depose against and accused because of threat to their life, more so when the offenders are habitual criminals or high-ups such instances are also not uncommon where a witness is not inclined to depose because in the prevailing social structure he wants to remain indifferent. Thus the public prosecutor in an ordinary case has to face with so many odds. The courts while appreciating the evidence should not lose sight of these realities of life and cannot afford to take an unrealistic approach by sitting in an ivory tower.

14. The evidence of Raj Kali and Ashok Kumar corroborates that the incident took place at the spot and immediately after the incident both the witnesses saw the inured laying on the ground. This fact further proves the factum of incident. The evidence of both

the witnesses on this point is credible and cogent. The evidence of Het Ram PW6 and Satpal PW3 stand corroborates by both the witnesses.

15. The learned counsel for the appellant contended that there were independent witnesses of the incident

and they had not been produced before the court. It was further pointed out that according to the prosecution evidence many persons came at the spot at the time of incident. It was further pointed out by the learned counsel for the appellant that two persons, namely, Charan Chawla and Durga Das who were named in the FIR have not been produced before the court. As such the appellant is entitled to be acquitted on this score only. The learned AGA refuted the contention and contended that Charan Chawla and Durga Das mentioned in the FIR had not supported the prosecution version in the statements recorded u/s 161 Cr.P.C. therefore, it was not necessary for the prosecution to examine them in the court. Learned AGA contended that their non-examination does not help the appellant. It is an admitted fact that it has come in the evidence that many people were present at the spot. It is not always necessary to multiply the evidence of incident on the same point. The prosecution evidence had sufficiently proved the factum of incident and participation of the appellant in the commission of the offence. It has to be seen what is the quality of the evidence not the quantity which is required. The evidence available on record is otherwise satisfactory in nature and cannot be said to be trustworthy and increase in the number cannot be turned up as the

requirement of the case. The witnesses of they are participating in that event their evidence cannot be thrown out rightly on the ground that the other witnesses have not been produced. The courts have to more carefully examine the evidence of interested witnesses. If the witnesses produced by the prosecution are trustworthy then it is not required that

there should be multiplicity of evidence. The Hon'ble Apex Court in **Babu Ram Vs. State of U.P. 2002 SCC 1400** has observed that it is settled law that non-examination of an eye witness cannot be pressed into service like a ritualistic formula for discarding the prosecution case with the stroke of a pen. An effort should be made at appreciating the worth of such evidence as has been adduced. If the evidence coming from the mouth of the eye witnesses examined in the case is found to be trustworthy and worth being relied upon so as to form a safe basis for recording a finding of guilt of the accused persons then non-examination of yet another witness who would have merely repeated same story as has already been narrated by other reliable witnesses would not cause any dent or infirmity in the prosecution case. In the instant case the evidence adduced by the prosecution is truth worthy and worth being relied on. There is not need to further produce the same evidence before the court. There is no weight in the contention of the learned counsel for the appellant.

17. The learned counsel for the appellant further pointed out that the prosecution has relied upon the evidence of PW3 Satpal Singh injured and PW6 Het

Ram who belonged to the police department and they are highly interested persons and their testimony should not be believed. The contention was refuted by the learned AGA and submitted that it is no doubt that both the witnesses are police personnel but it is well settled position of law that if the persons are interested their testimony cannot be discarded on that ground alone. Their evidence can only be scrutinized with care

and caution. It is the evidence available on record is otherwise satisfactory in nature and can be said to be trust worthy and increase in the nature of witnesses cannot be turned up as the requirement of the cases. The witnesses if they are participating in that event their evidence cannot be thrown out rightly on the ground that other locality persons available on the spot have not been produced. The public prosecutor in ordinary the witnesses before the court. Some times the witnesses do not have the courage to depose against an accused because of threats to their life, and some times they want to remain indifferent due to the prevailing social structure. It is not uncommon that when a witness is not inclined to depose against an accused because in the prevailing social structure he wasn't to remain indifferent to the incidents which occurs in his presence. The courts while appreciating the evidence should not lose its sight of these realities of life and cannot afford to take an unrealistic approach. In such situation the prosecution had the only option to adduce the evidence of interested witnesses. Although it is true that witnesses may be interested but their evidence cannot be discarded on

this ground alone. There is no rule of law or prudence, which requires that the evidence of a close relation must be discarded for the simple reason that hey are, interested witnesses. In the present case Het Ram PW6 eye witness is a police personnel and injured PW3 Satpal Singh is also an eye witness. Their evidence cannot be brushed aside simply because they are police personnel. The witnesses must be interested to give the evidence to convict the wrong doer and they would

not life to adopt a course by which some innocent person would be convicted in place of the person really guilty of the author of the injury. In view of the above proposition the prosecution has adduced the evidence of two witnesses who are constables and had corroborated the entire story apart form PW1 Raj Kali and PW4 Ashok Kumar. The evidence of these witnesses is trust worthy and nothing could be elicited during their cross-examination and if the prosecution has established its case by cogent evidence the multiplicity of the witnesses is not required.

18. The learned counsel for the appellant further contended that there are certain discrepancies in the evidence of the prosecution with regard to the time when the incident took place. There is a discrepancy in the deposition of the witnesses. Some says it happened at 10 PM, whereas the others say it was happened at 12:08 below. Some of the witnesses stated that the incident took place from 10 p.m. to 1 a.m. and some had stated it from 12 or 1 a.m. It was further contended that one witness stated that the appellant fired on the injured from a distance of 9 feet

and the other witness stated that it was from 10 to 11 feet. The learned counsel for the appellant further pointed out that as per the Modi's jurisprudence if a fire is made form a distance of 6' then the cap of the cartridge will remain inside the injury. If it is fired from more than a distance of 6' then such things would not be found on the person of PW 3 Satpal Singh. The learned AGA refuted the contention. At the time of incident no body is supposed to count the steps and exact measurement form which the fire was made. The

observation of the witnesses differs from person to person and what one may notice, another may not. An object or moment might emboss its imagine on one person's mind whereas it might go unnoticed on the part of another. By and large the people cannot accurately recall a conversation and reproduce the very words used by them or heard by them. They can only recall the main purport of the conversation. It is unrealistic to expect a witness to be a human tape-recorder. The witness cannot be expected to pose a photographic memory and to recall the details of an incident. Ordinarily if so happens that witness is overtaken by the events, the witness could not have anticipated the occurrence, which so after has an element of surprise. Ordinarily a witness cannot be expected to recall accurately the sequences of events, which took place in a rapid succession or in a short time of span. A witness is likely to get confused or mixed up when interrogated, later on.

19. If the minor contradictions are there it don not affect the prosecution story. The courts should not take into account such minor discrepancies, which are bound to come on the truthful testimony of the witnesses. The discrepancies as pointed out by the learned counsel fort the appellant are not of such consequences. As such I do not find any substance in the contention of the learned counsel for the appellant.

20. The learned counsel for the appellant contended that the prosecution has not established any motive for

the offence committed by the appellant. As such the appellant is entitled to be acquitted on this score alone. The learned AGA refuted the contention. It is well-settled position of law that mere fact that the prosecution had failed to prove the motive on the part of the appellant to commit the crime it would not reflect upon the credibility of the witnesses satisfactorily and convincing then the absence of motive becomes irrelevant. In the instant case the role of the appellant in the crime stands clearly established. The ocular testimony produced in this case is very cogent and convincing. It is settled law that establishment of motive is not a sine qua non for proving the prosecution case. Even if the prosecution has failed to prove the motive, the entire evidence cannot be discarded. In the present case the prosecution has adduced the evidence that on the fateful day the injured alongwith other police personnel was on patrol duty. As soon as the police party reached in the campus of the hospital they heard the sound of knocking of the doors. Immediately thereafter they

reached at the spot and intercepted. The appellant did not pay any heed to the warning of the police. The appellant came up on the stairs and fired upon the police. According to the prosecution the appellant was there to cause injuries to PW1 Raj Kali but the police personnel intervened during that period so he caused the injuries to the police personnel (injured). As such the contention of the learned counsel for the appellant is not tenable.

21. The learned counsel fort the appellant further contended that the blood stained cloths; cartridges

and holes of the cartridges, which were taken into custody, were not sent to the expert. Failure to send these materials exhibits to expert make the prosecution evidence untrustworthy and unreliable. The learned AGA refuted the contention. In the present case the ocular testimony is credible and cogent. The defence counsel could not make any dent in the ocular testimony. It the ocular testimony is found reliable the defects in investigation becomes insignificant. The court cannot reject the entire oral testimony solely on the ground that there were defects in the investigation. To do so would tantamount to play in the hands of the Investigating Officer.

22. It has been held in **Chhotu Vs. State of Maharashtra 1997 CRI.L.J 4394 (SC):-**

> "That necessarily means that all of them were the most natural and probable witnesses to an incident that then took place near his house, notwithstanding the fact that
>
> they were not residents of that locality. It also requires to be mentioned here that if the Investigating Officer failed to seize the bloodstained clothes of PWs 3 and 8 and to promptly examine PW3, whose names as any eye witness was disclosed immediately after the incident, it only indicates remissness on his part but the evidence of PW3 and 8 was not in any way impaired thereby."

23. The Apex Court has, while maintaining the conviction of the appellant in **Karnel Singh Vs. State of M.P. 1995 CRL.L.J 4173, observed:-**

“Notwithstanding our unhappiness regarding the nature of investigation, have to consider whether the evidence on record, even on strict scrutiny, establishes the guilt. In case of defective investigation the Court has to be circumspect in evaluating the evidence but it would not be right in acquitting an accused person solely on account of the defect; to do so would tantamount to playing into the hands of the Investigating Officer if the investigation is designedly defective. Any Investigating Officer, in fairness to the prosecutrix as well as the accused, would have recorded the statements of the two witnesses and would have drawn up a proper seizure-memo in regard to the Chaddi. That is the reason why we have said the investigation was slipshod and defective.”

24. While dealing with this matter Hon’ble Supreme Court in Dhanaj Singh **@ Shera and others Vs. State of Punjab 2004 (3) SCC p-654** has observed that in the instant case, the High Court found several disturbing features which indicated how the investigating officer had made out a new case to save the accused persons and to implicate the complainant party. Hence, the High Court analyzed the evidence of the eye witnesses with due care and caution. On finding the said evidence to be credible, the High Court upheld the conviction recorded by the trial court. Before the Hon’ble Supreme Court, the accused appellants challenged the conviction on the grounds (1) that the police after thorough investigation had

concluded that it was the complainant party which caused the death of the deceased (ii) that the pellets, wads and cartridges were not recovered from the spot, (iii) that the weapons of assault and the pellets were not sent for ballistic examination, (iv) that the blood stained earth was not sent for chemical examination (v) that many persons who could have thrown light on the incident had not been examined, and (vi) that the evidence being that of highly interested and inimical persons, should have been discarded. Dismissing the appeal, it was held by the Apex Court that even if the investigation is defective, that pales into insignificance when ocular testimony is found credible and cogent. In the case of a defective investigation the court has to be circumspect in evaluation the evidence. But it would not be right in acquitting an accused person solely on account of the defect. To do so would tantamount to playing into the hands of the investigating officer if the

investigation designedly defective. In view of the above discussion, I do not find any merit in the contention of the learned counsel for the appellant.

25. The learned counsel for the appellant further contended that there was no light at the time of the incident. Learned AGA refuted the contention. The Investigating Officer while preparing the site Ex.Ka9 has clearly shown that there was an electric pole behind the building where the complainant party was standing and PW6Het Ram also stated that there was light on the spot. As such they had identified the appellant. Apart this it is also in evidence that the police personnel used to come to the hospital in connection with medical examination of the injured

persons. They stated that they are known to each other. This aspect cannot be ignored while considering the point of identification of the appellant. If the witnesses and the appellant are known earlier the identification is possible form the manner of speech, manner of walking and gesticulating and special features of a person like the physical attributes**.(See State of U.P. Vs. Babu and others, 2004 Supreme Court Cases (Cri) 144).** In view of the above the contention of the learned counsel for the appellant is not tenable.

26. The learned counsel for the appellant further contended that it has come in the evidence that a dying declaration was recorded on the expectation that the injured was serious at Haldwani hospital but that has not been produced. The learned AGA refuted the

Contention. The dying declaration looses its importance as the maker of the dying declaration is alive. When the maker of the dying declaration is alive, it cannot be said to be a dying declaration. It can only be stated that it is a previous statement of a witness. In the present case a copy of the said dying declaration, which can be treated as a previous statement, was not supplied to the appellant. It is also admitted by the parties that the appellant has not moved any application before the court below that a copy of the said statement has not supplied to the appellant. This point has not been raised before the court below at the time of arguments. It is not pointed out as to how the prejudice has been caused to the appellant. If the prejudice has been caused to the appellant. If the appellant has not received the copy of the said dying

declaration it was first to move an application to bring this fact to the notice of the court below and to get a copy of that document from the court. Secondly, if the appellant has not applied for that he cannot take the benefit. It may also be not helpful to the appellant when the ocular testimony of the witnesses is reliable and cogent then the contention it not tenable. The learned counsel for the appellant has placed reliance on the case of **Ranjit Singh Vs,. State, 1971 Cri.L.J. 1255.** In the present case the court acquitted the accused on the ground that the appellant was prejudiced by not supplying the copy of the said dying declaration. The accused time and again applied for supply of the copy of the document but he was denied. In such a circumstance the court came to the conclusion that the prosecution deliberately withheld the document and prejudice was caused. In this ruling What happened was that the statement of the prosecution witnesses were recorded u/s 164 Cr.P.C. but these statements could not be made available to the accused for cross-examination as they were not traceable. The Hon'ble Supreme Court held that the appellant was handicapped in his defence.

27. The learned counsel for the appellant has placed reliance on the decision of this court in **Sher Singh & others Vs. State in Criminal Appeal No.725/2001 decided on 16.12.2004,** in which it was mentioned that the dying declaration being a previous statement was not made available to the defence. The appellant had a right to cross-examine the witnesses with reference to the previous statement. The Division Bench of this Court came to the conclusion that rather the ocular testimony was not reliable and cogent and

found that this fact also dent the prosecution story. In the present case the ocular testimony is completely reliable and cogent and as such it cannot be said that the ocular testimony of witnesses can only be discarded on this ground alone.

28. The ocular testimony further stands corroborated by the medical evidence. From the medical evidence it is clear that the injured sustained one gun shot injury. According to the opinion of the doctor the time of the injury was afresh. It could have been caused at about 11 p.m. It was further opined that the said injury was caused by fire arm. In view of the opinion of the doctor the prosecution case stands corroborated by medical evidence.

29. The appellant was arrested and recovery of gun was made form his at the spot. This fact further corroborates that he incident took place in the manner as alleged by the prosecution. The incident took place at 11 p.m. and the report of the incident was lodged at 11.30 p.m. The prompt FIR thus inspire confidence that it was not the outcome of dui deliberation and consultation. The FIR in a case particularly in such injury case is a vital and valuable piece of evidence. For the purpose of appreciating evidence led at the trial the object of insisting upon prompt FIR is to obtain earliest information regarding the circumstances in which the crime was committed including the names of the actual culprits and the role played by them. The weapon, if any used as also the names of the eye-witness, if any, delay in lodging the FIR often resulted in embellishment which is a creature of afterthought.

Thus the prompt FIR further corroborates the fact that the incident took place as stated by the prosecution.

30. The defence has taken a plea that the appellant has been falsely implicated in the case. The appellant has adduced the evidence of Bhoj Raj DW1 who was also Chaukidar in the said hospital. He stated that he was performing his duties as a watchman on the fateful night. He did not hear the sound of fire and he did not see nay occurrence. The appellant was arrested on the next day in the morning by the police alongwith the gun. The statement of Bhoj Raj is not reliable because during the cross-examination he stated that he could not hear the sound of any fire arm from the place from

which he was performing his duties. Dr.Yogesh Misra PW2 stated that he was informed about the incident by Bhoj Raj. He stated that he heard the noise of fire and he informed the police. As such the defence witness is not credible and cogent.

31. Now the question comes for determination as to whether the appellant is liable to be punished u/s 307 IPC or under any other section. To constitute an offence u/s 307 IPC two ingredients of the offence must be present. (a) an intention of or knowledge relating to commission of murder and (b) the doing of an act towards it. To constitute an offence under Section 307 I.P.C., an intention or knowledge relating to the commission of the offence. What is material is the intention or knowledge and not the consequences of the actual act done for the purpose of carrying out the intentions. It clearly contemplates that an act which is

done with the intention of causing death. The intention or knowledge must be such as is necessary to constitute the murder. In order to convict an accused, it is necessary to establish ingredients of Section 307 I.P.C In the present case PW3 Satpal Singh injured and PW6 Het Ram have not stated any where in their statements that the fire was caused with intention to kill the injured. In the absence of this it cannot be said that there was an intention to commit the murder. It is also in evidence that the injury sustained by the injured was at the elbow of the left hand. It was also in the evidence of PW2 Dr. Yogesh Misra that the injury was not on the vital part and it was not dangerous to the life. The injured did not sustain the injury on the vital

part. It cannot be said that the intention was to cause the death of the injured. It is in the evidence that the appellant had an intention to cause the injuries to kill Raj Kali but he police intervened and the appellant fired upon the police. I am fortified to take the view laid down in the case of **Parsu Ram Pandey and others Vs. State of Bihar, 2005 Supreme Court Cases (Cri) 11**3. In this case the accused came alongwith other appellants at the spot to kill someone and some of the appellants fired on the deceased who died on the spot. Thereafter the appellant fired straightway on the villagers. The Apex Court held that there was no intention to cause the death and only the offence u/s 324 IPC was found to be proved.

32. In view of the above I find that the appellant is to be convicted u/s 324 IPC instead of 307 IPC. It has been contended that the appellant is 60 years of age and a leniency may be taken. I find that it would be

just and proper if the appellant is sentenced to undergo R.I. for one year u/s 324 IPC.

33. The appeal is partly allowed. The sentence awarded against the appellant u/s 307 IPC by the trial court are set aside. The appellant is convicted and sentenced under section 324 IPC to undergo R.I. for a period of one year.

34. Let the lower court record be sent back to the court concerned for compliance. Compliance report be submitted within three months.

(J.C.S. RAWAT, J.)

Dated:- 27-7-2005
MPS